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DCI/ICS 0917-87  
5 August 1987

MEMORANDUM FOR: Lieutenant General Edward J. Heinz, USAF  
Director, Intelligence Community Staff

FROM:



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Director, Community Counterintelligence and  
Security Countermeasures Office, IC Staff

SUBJECT: Intelligence Community Legislative Program

REFERENCE: DCI/ICS 4739-87, dated 27 July 1987, same subject

1. The following comments are made regarding the Legislative Program for the second session of the 100th Congress. These comments are based on the general program set forth in the President's "Report to the Congress on the Nation's Counterintelligence and Security Countermeasures Plans, Programs, and Capabilities." A copy of the Legislative portion of the President's report is attached for your convenience.

2. With regard to the Reference memorandum:

- o 100/2-5: Access by FBI to Tax Records for Counterintelligence Purposes
  - This is an extension of the investigative powers recently given to the FBI regarding financial data and telephone data. This is a worthwhile objective to be achieved because it would round out the capabilities of the FBI to pursue a thorough investigative path.
- o 100/2-2: Protection of Intelligence Information
  - This is a new legislation proposal and is keyed to page 41 of the President's report regarding the need for sanctions for unauthorized disclosures of classified information.
- o 100/2-3: Department of Defense Proprieties
  - This pending issue is mentioned on page 37 of the President's report. The first biannual report for the President on his

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report, dated 20 June 1987 (DCI/ICS 0848-87), stated "The Second Session of the 99th Congress did not take action on legislation proposed by the Department of Defense, with the support of the Director of Central Intelligence, to give the heads of the military services authority to create commercial entities to support military intelligence operations. In the course of its review of the FY 88/89 Intelligence Authorization Bill, the Office of Management and Budget (OMB) asked the Agency to consider whether or not it wished to include this proposal in that bill when it was transmitted to the Congress. That question had been posed to the ADCI and is awaiting his decision."

- o 100/2-6: Clarification of CIA/NSA/DIA Drug and Alcohol Abuse Authorities
  - Another pending issue mentioned on page 37 of the President's report was reported on in the first biannual report as follows: "The Second Session of the 99th Congress took no action on this proposal as contained in the draft FY 87 Intelligence Authorization Act as transmitted to the Congress (at least in part because OMB did not submit its draft until after the HPSCI and SSCI had acted on their respective authorization bills). The proposal has been included in the draft FY 88/89 bill. The Congress, however, is expected to again take no action on it."

3. There are several additional items from the President's report that are pending. These items are set forth below with comments as to their status at the time of the first biannual report. Director, ICS, may wish to remind the DCI of the status of these items:

- o Improvement of Cryptographic Security (p. 38):
  - NSA-drafted version of this provision was included in the draft FY 88/89 Intelligence Authorization Bill as sent to OMB for administration clearance. OMB, however, refused to approve its inclusion in that bill. This decision was based on opposition from the Department of State, other government agencies, and OMB itself. The opposition disagreed with the manner in which the NSA draft allocated powers and duties in this area within the executive branch. In addition, they believed that DoD already possessed sufficient authority to deal with problems in this area. The entire issue is now under review at OMB.
- o Safeguards for the Investigator and the Adjudicator (p. 38):
  - "For the last several years, through both the Carter and Reagan administrations, the Department of Justice, on behalf of the Administration, has proposed legislation to reform the law in this area. The Congress, however, has consistently either

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rejected it or counteroffered with legislation unacceptable to the Executive. Therefore, rather than continue to press for legislation, the Department recently instructed all federal agencies that they have the authority to indemnify their employees against such suits. This directive is in the process of being implemented throughout the Executive Branch. As a result, the Administration has determined not to press vigorously for legislation at this time." This bill would be a major benefit if it could be passed because it would be read as major support to a vigorous security policy.

- o DoD Use of the Polygraph for Counterintelligence Purposes (p. 39):
  - "The decision on whether to seek permanent, unlimited polygraph authority for DoD employees and if so, how to proceed, is entirely within the discretion of DoD. For this Congress, we understand DoD is seeking such authority but again is likely to be limited to one-year authority with a numerical ceiling on the number of individuals to be polygraphed."
- o Exemption of Security Determinations from Administrative and Judicial Review (p. 39):
  - "This provision was included in the FY 87 draft Intelligence Authorization Bill as sent to Congress but was rejected during Congressional consideration. OMB has directed that the provision not be included in the draft 88/89 bill. The ADCI is determining whether or not to appeal that OMB staff decision to the Director of OMB. Should, in any event, the provision go forward, we expect the Congress will again reject it."
- o Enhancing the Value of Security Questionnaires (p. 40):
  - "The Agency's Office of General Counsel, upon further review, raised a question about this provision and determined that it should be re-reviewed. As of this date, the provision is still under that re-review."
- o Protection of Technical Data with Space Application (p. 40):
  - "The National Aeronautics and Space Administration (NASA) agreed to include this proposal in their draft FY 88 Authorization Bill to be sent to the Congress."
- o Illegals and Support Agents (p. 41):
  - "This provision was included in the draft FY 88/89 Intelligence Authorization Bill as sent to OMB for review. In the midst of that review process, however, the Justice Department indicated

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that there was not sufficient agreement within the Department as to the need for this authority or as to its constitutionality. Therefore, the proposal was withdrawn from the bill, pending further Justice review."

- o Sanctions for Espionage (p. 41):
  - "The Department of Justice is taking the lead on a comprehensive review of legislation to reinstitute the death penalty across-the-board. Espionage is one of the offenses included in this effort. In addition, in response to allegations concerning the Moscow Embassy affair, several Members have introduced legislation calling for the death penalty for espionage."



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